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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 296

THOMAS KADLEC, JAMES W. KADLEC, AND ISAAC GRINSTEAD,

Petitioners,

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF ILLINOIS BELL TELEPHONE COMPANY IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals is reported at 407 F. 2d 624.

THE QUESTION PRESENTED FOR REVIEW

The question presented for review is whether the courts below were in error in holding that the plaintiffs' Amended Complaint (as amended) failed to state a claim upon which relief could be granted under Section 1983 of the Civil Rights Act (42 U. S. C. § 1983).

STATEMENT OF THE CASE

1. The Proceedings Below.

Plaintiffs Thomas and James Kadlec filed the original Complaint (p. A1, *infra*) in this cause on March 31, 1967. Their pleadings were subsequently amended three times.[1] "Amendments to the Complaint" (p. A7, *infra*) were filed on August 3, 1967, and subsequently an entirely new "Amended Complaint" was filed (p. A10, *infra*). The Amended Complaint itself was amended on February 14, 1968 (p. A18, *infra*). As a result of these amendments, Isaac Grinstead was added as a plaintiff and the original prayer for restoration of telephone service was dropped so that now only money damages are sought.

The District Court, pursuant to its second memorandum opinion, dismissed the amended pleading for it failed to state a claim upon which relief might be granted. The Court of Appeals affirmed.

2. The Plaintiffs' Allegations.

The Amended Complaint alleges that each of the three plaintiffs had his own separate residential telephone line (Amended Complaint, pars. 10, 17, 27, pp. A11, 13, 14, *infra*). On March 16 and 17, 1967, the defendant terminated service on these three lines (Amended Complaint, pars. 10, 15, 17, 26, 27, pp. A11-14, *infra*). The reasons for the termination are not alleged.[2] In addition, it is alleged

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1. The record in this Court consists of the plaintiffs' Brief and Appendix and the defendant's Brief and Appendix from the court below, together with the opinion, judgment and order denying rehearing. For convenience we have reprinted the Complaint and each amendment in the Appendix to this Brief, *infra*.

2. In oral argument in the court below, plaintiffs' counsel stated plaintiffs had connected their own telephone extensions to the residential lines.

that on March 16, 1967, employees of Illinois Bell "searched" the premises of Thomas and James Kadlec (Amended Complaint, par. 20, p. A13, *infra*), presumably in connection with the termination of service. No search of Grinstead's premises is alleged. There is no allegation that any of plaintiff's property was seized or removed.

James Kadlec and Thomas Kadlec are partners in an automobile parts business named "Skokie Automotive" located in Niles, Illinois (Amended Complaint, par. 16, p. A12, *infra*). The Amended Complaint mentions that Thomas Kadlec has a business in Kankakee, Illinois (Amended Complaint, par. 9, p. A11, *infra*), but does not indicate the nature of the Kankakee business; in the original Complaint this was stated to be an auto parts business (Complaint, par. 4, p. A1, *infra*).

The three telephones that were terminated were in premises adjacent to the Niles and Kankakee businesses (Amended Complaint, pars. 9, 27, 16, Complaint, par. 5, pp. A11, 14, 12, 2, *infra*). The original Complaint alleged that the Kadlecs' Niles business was served by two other telephone lines (Complaint, par. 6, p. A2, *infra*), and their Kankakee business also had two other lines (Complaint, par. 9, p. A3, *infra*). There is no allegation that service on these four business telephone lines was terminated. Thus, the inventory of business and residential telephones as as follows:

Location	Number	Disposition
1. In Kankakee		
a) In business premises	WE 9-3534	In Service
	WE 9-3535	In Service
b) In adjacent small house	258-3811	Terminated
c) In adjacent caretaker's trailer	WE 2-3964	Terminated
2. In Niles		
a) In business premises	NE 1-1199	In Service
	NI 7-9320	In Service
b) In adjacent residence	NI 7-8145	Terminated

The plaintiffs initially alleged that two of the terminated lines (at the small house in Kankakee and at the Niles residence) were for Call-Pak service (Complaint, pars. 7, 10, 11, pp. A2, 3, *infra*). Call-Pak provides residential telephone service based upon a flat fee rather than upon the customary time-distance-unit cost basis on which business telephone service is normally provided. Call-Pak is a special service for residential use only; it is not available for business use.

ARGUMENT

The Court of Appeals and the District Court each concluded that the amended pleadings failed to state a claim upon which relief might be granted and that the normal, day-to-day business of Illinois Bell is not conducted under color of state law. This conclusion is correct and there is no occasion for further review.

In essence, the Petition presents only a private controversy as to plaintiffs' right to telephone service under their contract with defendant and as to their obligation to allow the telephone company access to its equipment. By endeavoring to clothe their Complaint in constitutional garb, plaintiffs hope to gain review by this Court. Clearly such review should be denied. The Petition raises no important questions of federal law, no decision in conflict with this Court's opinions, and no deviation from accepted judicial procedure by the lower courts to warrant the exercise of this Court's supervisory powers. Rather, it presents a case of alleged breach of contract and private trespass that has received ample and fair consideration by the courts below.

Plaintiffs ground their claim for damages on the Civil Rights Act of 1871, 42 U. S. C. § 1983.[3] To state a claim

3. The Court of Appeals held no claim was stated under 42 U. S. C. § 1985. This is correct, albeit unnecessary, for plaintiffs have never relied upon an equal protection claim under that section; reference to that section was abandoned below where plain-

plaintiffs must allege (1) they have been deprived of a right, privilege or immunity secured by federal law or the United States Constitution, and (2) that the defendant's action was taken under color of law. *Monroe* v. *Pape*, 365 U. S. 167 (1961); see *U. S.* v. *Classic*, 313 U. S. 299 (1940). A private dispute, such as that alleged here, is not covered by Section 1983. See *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 722 (1961).

The Amended Complaint, as amended, alleges no facts showing that the State of Illinois was in any way involved with the termination of plaintiffs' telephone service. Plaintiffs merely assert the bare conclusion that defendant acted "under color of law or regulations of the State of Illinois" (Amended Complaint, par. 29, p. A15, *infra;* see also par. 21, p. A14, *infra*). No state statutes or regulations purportedly clothing the defendant with governmental authority in terminating telephone service are cited. Instead, plaintiffs argue that because defendant provides, and in this instance terminated, service in accordance with its own published tariffs, state action is necessarily involved. Even here, the Amended Complaint does not identify which tariff provisions plaintiffs decry[4] and implicit in their argu-

tiffs advised both courts that the only issues concerned § 1983 (Plaintiffs' Brief in Opposition to Motion to Dismiss, par. 1, Defendant's Appendix in the Court of Appeals, p. 16; "Contested Issues", Appellants' Brief in the Court of Appeals, p. 8).

4. Exhibit A to the "Amendments to Complaint", filed August 3, 1967 (pp. A8-9, *infra*) is a copy of two of defendant's tariffs that were then in effect. Plaintiffs there alleged defendant's action was in part due to these two tariffs, but all references to them were dropped when plaintiffs filed the Amended Complaint. We are unsure what reliance plaintiffs now place on these allegations for they have printed in their Appendix to the Petition only the "ownership" tariff, presumably to show a reason for defendant's action. Defendant acted because it concluded that plaintiffs breached the terms of several tariffs and improperly used Cal-Pak service by connecting their own extensions from their residence lines to their business premises in an effort to avoid the higher cost of business telephone service.

ment, of course, is that defendant's action was properly taken pursuant to the tariffs' terms.

The application of plaintiffs' theory would "render the concept of state action [*i.e.*, color of law] a hollow and superfluous element". *Elders* v. *Consolidated Freightways Corp.*, 289 F. Supp. 630, 634 (D. Minn. 1968). Plaintiffs' view would place every dispute between a telephone company and subscriber resulting in termination of service within the scope of the Civil Rights Act. It is not sufficient to claim merely that a defendant has some connection with the state. *Reinke* v. *Richardson*, 279 F. Supp. 155 (E. D. Wis. 1968); *Christman* v. *Pennsylvania*, 275 F. Supp. 434 (W. D. Pa. 1967), *cert. denied*, 393 U. S. 885 (1968). The allegations must show that the claimed state involvement was significantly associated with the challenged activity (*Browns* v. *Mitchell*, 409 F. 2d 593 (10th Cir. 1969); *Grossner* v. *Trustees of Columbia University*, 287 F. Supp. 535 (S. D. N. Y. 1968)) and that the state's involvement was such that the private defendant became clothed with the power, prestige or position of the state itself. *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (1961). This plaintiffs have failed to do. The Amended Complaint does not allege (nor does the Petition present in argument) any facts showing a relationship between the State of Illinois and the defendant as to the decision to terminate, or the act of terminating, the telephone service. It is not claimed that a state policy of discrimination was being effectuated by the private defendant or that the plaintiffs have been treated differently from other persons whose conduct has been similar.

The presence of the state is not injected merely because in terminating service the telephone company carefully followed its own tariffs, and thus the terms of its contract with the subscribers. *Taglianetti* v. *New England Tel. & Tel. Co.*, 81 R. I. 351, 103 A. 2d 67 (1954); *Williams* v. *Yel-*

low Cab Co. of Pittsburgh, Pa., 200 F. 2d 302 (3rd Cir. 1952), *cert. denied sub. nom. Dargan* v. *Yellow Cab Co.*, 346 U. S. 840 (1953); *Weyandt* v. *Mason's Stores, Inc.*, 279 F. Supp. 283 (W. D. Pa. 1968). The tariff schedules prepared by the defendant, or the other 60-odd telephone companies in Illinois, (ILL. REV. STAT. Ch. 111⅔, §§ 33, 35, 36 (1967)) are entirely different from the rules, regulations and orders of the Illinois Commerce Commission (ILL. REV. STAT. Ch. 111⅔, §§ 41, 53 (1967)). The company tariffs must be placed on file with the Commission but may go into effect after a notice period without formal Commission action (ILL. REV. STAT. Ch. 111⅔ §§ 35, 36 (1967)). Once in effect the tariff schedules simply provide the basis for the private contract between the company and the subscriber. *Sarelas* v. *Illinois Bell Tel. Co.*, 42 Ill. App. 2d 372, 192 N. E. 2d 451 (1963); *Illinois Bell Tel. Co.* v. *Miner*, 11 Ill. App. 2d 44, 136 N. E. 2d 1 (1956). Plaintiffs do *not* claim that service was terminated pursuant to an order of the Commerce Commission. The court below was entirely correct in holding:

> "The mere filing of these regulations with the state neither clothed Illinois Bell with state authority nor did it bring it under the aegis of the state. . . . Here, the nexus between the state and defendant's conduct was not sufficient to maintain an action under § 1983." (407 F. 2d at 626-627)

The plaintiffs' reliance on *Camara* v. *Municipal Court*, 387 U. S. 523 (1967) and *See* v. *City of Seattle*, 387 U. S. 541 (1967) to support their contention that the Fourth Amendment is applicable is entirely misplaced. Both cases involved *governmental action* and thus have no application here. *Burdeau* v. *McDowell*, 256 U. S. 465 (1921). In *Camara* the court made this distinction clear by pointing out:

> "The basic purpose of this [Fourth] Amendment,

> as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions *by governmental officials.*" (387 U. S. at 528; emphasis supplied)

Plaintiffs' argument as to the First and Fourteenth Amendments is not supported by the decisions cited. They rely upon *Sokol* v. *Public Utilities Commission,* 65 Cal. 2d 247, 53 Cal. Rptr. 673, 418 P. 2d 265 (1966); *Tollin* v. *Diamond State Tel. Co.,* 39 Del. Ch. 350, 164 A. 2d 254 (1960); *Laffer* v. *Cincinnati & Suburban Bell Tel. Co.,* 144 N. E. 2d 158 (Ohio C. P. 1957) and *Andrews* v. *Chesapeake & Potomac Tel. Co.,* 83 F. Supp. 966 (D. D. C. 1947). In all four of these decisions *all* telephones were removed *by police* during a gambling raid, or *total* disconnection was threatened in a directive *from law enforcement agencies.* Cases involving police intervention do not support plaintiffs' thesis here. Where, as in the instant case, the telephone company acts alone in its own business interest, no constitutional question is presented. *Taglianetti* v. *New England Tel. & Tel. Co.,* 81 R. I. 351, 103 A. 2d 67 (1954); *Katz* v. *American Tel. & Tel. Co.,* 86 P. U. R. (n. s.) 65 (F. C. C. 1950).

CONCLUSION

The decision of the Court of Appeals correctly interprets the Civil Rights Act and is not in conflict with any prior decisions of this Court, or of any other court. Further review is not warranted.

Respectfully submitted,

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August 1969.

APPENDIX

COMPLAINT

Now come Thomas Kadlec and James W. Kadlec, plaintiffs herein, by Harry R. Booth, their attorney, and complaining of the defendant, Illinois Bell Telephone Company, allege:

1. Plaintiffs Thomas Kadlec and James W. Kadlec are residents of the County of Cook, State of Illinois and are citizens of the United States.

2. The defendant, Illinois Bell Telephone Company, a corporation, organized under the laws of the State of Illinois (hereinafter referred to as "IBT"), is engaged in rendering telephone service in the said City of Chicago and County of Cook. It is part of the nationwide American Telephone and Telegraph system, of which it is a subsidiary. IBT's principal office is located in the City of Chicago.

3. This Court has jurisdiction over this Complaint under Title 42, U. S. C. 1983, 28 U. S. C. 1331 and 1343 and Amendment I and Section I of Amendment XIV of the Constitution of the United States.

4. Plaintiff, Thomas Kadlec, has been engaged for more than 10 years in the business of selling automobile parts and related operations, including the rebuilding of certain parts, at wholesale and retail under the names of Kankakee Auto Parts and Skokie Automotive. Such business is operated at two locations, the largest of which is near the City of Kankakee and the other in Niles, both in the State of Illinois. James Kadlec is a partner of his brother, Thomas Kadlec, in the Skokie operations, but participates

in the Kankakee business as an employee. Both businesses combined generally employ from 6 to 8 persons. Such businesses are also among the largest of their kind in the areas in which they operate, and the Kankakee Auto Parts is the largest of its kind in both the city of Kankakee and the county in which that city is located.

5. Plaintiff James Kadlec operates separate buildings used for residential and business purposes at both locations. 7254 Milwaukee Avenue, Niles, contains a two-story residence and another building used for the sale and storage of auto parts. James Kadlec, and his sister, Rosemarie Kadlec, and their parents live in the two-story residence on Milwaukee Avenue.

6. IBT renders service to plaintiff, Thomas Kadlec, for his Skokie Automotive operations, under contracts, with telephone numbers NEwcastle 1-1199, a direct Chicago line, and NIles 7-9320. Both such lines have been advertised at substantial expense by Plaintiff and are used by customers or prospective customers calling Plaintiffs' Niles business operated under Skokie Automotive.

7. On or about August 1, 1964, IBT, at plaintiff, Thomas Kadlec's request, contracted to install a Call-Pak line, number NIles 7-8145 in the aforesaid residence for the use of James and Rosemarie Kadlec. Such number, though unlisted, has been given by James Kadlec to various persons who communicate with him largely for personal reasons. Such number was also given to the United States Army, in accordance with its regulations requiring that plaintiff, a Captain in the Reserve Army, be available for emergency or other service.

8. Such number has also been given to the Niles Police Department, who from time to time call it for emergency nighttime towing service performed by plaintiffs Thomas

Kadlec and James Kadlec, in accident or other emergency situations.

9. IBT renders service to plaintiff Thomas Kadlec at its Kankakee business, with numbers WE 9-3534 and 3535, which are used primarily for incoming and outgoing telephone calls of such business.

10. IBT also furnished plaintiff Thomas Kadlec in 1965 with a Call-Pak line, number Peotone 258-3811, at a monthly minimum rate of $97.50, which was installed in a small house located on such Kankakee property. In the same year it installed number WE 2-3964 at plaintiff's request in a trailer located just outside of such Kankakee properties. The trailer is occupied by Isaac Grinsted and his wife. Grinsted, who is over 60 years old and retired, lives in the trailer. He acts as a night watchman of such Kankakee property for the purpose of protecting it and the business from theft and fire. As part of the consideration for such services plaintiff pays for his telephone and other utility bills.

11. The aforesaid telephone equipment at such numbers was installed by IBT employees who had knowledge that lines 258-3811 and NI 7-8145 had contracted for Call-Pak service.

12. Although plaintiff Thomas Kadlec, had ordered NI 7-8145, James Kadlec, from time to time, directly paid IBT for service rendered under such line.

13. As of March 18, 1967 plaintiffs had received no notice of any kind from IBT that it was dissatisfied in any way with the use by plaintiff, or any agent or employee of his, of any of the telephone lines or service provided by IBT to the plaintiff or his agents.

14. The plaintiffs and their agents used IBT's communication facilities as an indispensable, established and recognized means of communication and speech with

various persons located primarily in the State of Illinois and also with persons in other states.

15. The American Telephone & Telegraph System, including IBT, furnishes over 80% of the telephone service in the United States.

16. IBT, in providing such telephone service to the plaintiffs, had agreed to furnish a means of communication to the plaintiffs or their duly authorized agents.

17. Communication by telephone has become a normal, regular and frequently an indispensable means of expression by practically all citizens of the United States either for residential, educational, personal, commercial and/or other related purposes.

18. The communication means provided by IBT through its telephone service and facilities when used by the plaintiffs constitutes a means of speech within the protection afforded citizens of the United States under the Constitution of the United States.

19. On March 16, 1967 and on March 17, 1967, IBT, without prior notice to the plaintiffs or their agents, disconnected telephone numbers PEotone 258-3811, WE 2-3964 and NI 7-8145.

20. As of March 16, 1967, plaintiff was substantially current in the payment of his telephone bills for any and all service rendered to him.

21. Plaintiffs had a property interest in the contracts with IBT in the furnishing of such telephone service under numbers NI 7-8145, PEotone 258-3811, and WE 2-3964. Such property interest was protected as a property right under the Constitution of the United States.

22. IBT, in discontinuing plaintiff's telephone service, purported to do so under the Public Utility Laws of the State of Illinois, Chapt. 111-2/3, Ill. Rev. Stats., 1965, or

regulations filed by it with the Illinois Commerce Commission which have the force and effect of law.

23. IBT did not, prior to its acts in discontinuing such telephone service, furnish plaintiffs or their agents with copies of any such regulations or rules or any other documents under which it discontinued such telephone service.

24. Any such Regulations, Rules or Laws of the State of Illinois under which IBT discontinued plaintiffs' telephone service violate and are contrary to Amendments I and XIV of the Constitution of the United States.

25. Plaintiffs have no remedy under the Laws of the State of Illinois for the protection of their rights under Amendments I and XIV as a result of the wrongful acts committed by the defendant IBT in violating such rights. Plaintiffs have suffered humiliation and harrassment as a result of the wrongful acts of IBT in discontinuing such telephone service. All such acts of IBT in discontinuing such telephone service are contrary to and in violation of Title 42 U. S. C. 1983, 28 U. S. C. 1343 and Amendment I and Section I of Amendment XIV of the Constitution of the United States.

26. Plaintiffs are suffering great and irreparable injury and damage as a result of the wrongful acts of IBT in discontinuing such telephone service.

27. Plaintiffs are suffering damages of a large and substantial character as a result of such wrongful acts.

28. The acts of IBT in discontinuing such service are of a wilful and reckless character.

29. Plaintiffs are entitled to temporary and permanent injunctive relief restraining defendant from discontinuing any other telephone service or equipment and a Mandatory injunction requiring it to restore all such telephone service and lines WE 2-3964, PEotone line 258-3811 and NI 7-8145.

30. Plaintiffs are entitled to the recovery of compensatory and punitive damages for the wrongful acts of IBT in discontinuing such service and additional such damages for each day during which such service continues to be disconnected.

Now, Therefore, plaintiffs, Thomas Kadlec and James W. Kadlec, pray that this Honorable Court enter the following orders or decrees:

1. Issue a temporary and permanent injunction directing Illinois Bell Telephone Company to restore telephone service forthwith and telephone lines WE 2-3264 and PEotone line 285-3811 and NI 7-8145.

2. Enter a temporary injunction preventing IBT from discontinuing any other service rendered by it to plaintiffs.

3. Award plaintiff, Thomas Kadlec, damages of $100,000.00 against IBT for its wrongful acts in discontinuing any one or all of such telephone lines and service.

4. Award plaintiff, James W. Kadlec, damages of $50,000.00 against IBT for its wrongful acts in discontinuing any one or all of such telephone lines and service.

5. Award each plaintiff additional damages of $250.00 per day for each of the lines which have been discontinued until such service has been restored.

6. Enter such further orders and decrees as may be just and necessary under the premises.

AMENDMENTS TO COMPLAINT.

Now Come the Plaintiffs, James Kadlec et al., by their attorney, Harry R. Booth, and pray for leave to Amend their Complaint by adding the following to their Complaint. Paragraph 3 is hereby amended as follows:

3. This Court has jurisdiction over this Complaint as amended under Title 42, U. S. C. 1983, 28 U. S. C. 1331 and 1343 and Amendments I, IV and Section I of Amendment XIV of the Constitution of the United States.

19 A. The Defendant, on or about March 16, 1967 or thereafter, entered the premises of the Plaintiffs in Kankakee and Niles, Illinois, without their consent and under threat of discontinuing all their telephone service conducted a search of such premises.

19 B. The Defendant, thereafter, under the threat of discontinuing all of Plaintiff's telephone service, again entered the premises and seized telephone equipment previously used by Plaintiffs for telephone service furnished by the Defendant to Plaintiffs.

19 C. All such acts of the Defendant were under color of law or by virtue of regulations or customs having the force and effect of law.

19 D. All such acts were under regulations filed by IBT with the Illinois Commerce Commission and, particularly, paragraphs 5 and 6, attached hereto as Exhibit "A".

19 E. IBT entered such premises and property of the Plaintiffs without a search warrant or any other similar authority approved by a judicial officer of the State of Illinois or otherwise.

19 F. All such acts were without prior notice and an opportunity for a hearing before such acts were committed before any judicial or administrative officer of the State of Illinois.

19 G. IBT's officers and agents during their entry and search of the premises of its subscribers, such as the Plaintiffs on information and belief attempt to secretly collect information as to the law abiding character of such subscribers.

19 H. The only remedy available to Plaintiffs before the said Illinois Commerce Commission would be by the filing of a Complaint with the said Commission after IBT had, without prior hearing and a notice conducted a search of Plaintiff's property and discontinued its service. Such a hearing would be extended and prolonged and would not involve an adjudication or determination of the rights of Petitioner of Plaintiffs under the Constitution of the United States.

19 I. All such acts of the Defendant were in violation of Amendments I, IV or XIV, Sec. I of the Constitution of the United States.

ILL. C. C. NO. 1
Section 1
Second Revised Sheet 1
Canceling First Revised Sheet 1

ILLINOIS BELL TELEPHONE COMPANY
General Local Exchange Tariff
Telephone Service

GENERAL REGULATIONS

1. The general regulations specified herein are supplementary to the regulations contained in other sections of this tariff. Any lawful change in regulations or in rates acts to that extent and without further notice as a modification of all subscribers' contracts.

• • • • •

5. OWNERSHIP AND USE OF THE EQUIPMENT—Equipment, instruments and lines on subscriber's premises, fur-

nished by the Telephone Company, shall be and remain the property of the Telephone Company, whose agents and employees have the right to enter said premises at any reasonable hour for the purpose of installing, inspecting or repairing the instruments and lines or for the purpose of making collections from coin boxes and, upon termination of the service, for the purpose of removing such instruments and lines. Such equipment is not to be used for performing any part of the work of transmitting, delivering or collecting any telephone message where any toll or consideration has been or is to be paid any party other than the Telephone Company, without the written consent of the Telephone Company.

6. UNAUTHORIZED ATTACHMENTS OR CONNECTIONS—No equipment, apparatus, circuit or device not furnished by the Telephone Company shall be attached to or connected with the facilities furnished by the Telephone Company, whether physically, by induction or otherwise, except as provided in this tariff. In case any such unauthorized attachment or connection is made, the Telephone Company shall have the right to remove or disconnect the same; or to suspend the service during the continuance of said attachment or connection; or to terminate the service.

Issued June 30, 1964 Effective August 1, 1964

By G. L. Seaton, Assistant Vice President
212 West Washington Street, Chicago, Illinois 60606

AMENDED COMPLAINT.

Now Come Thomas Kadlec, James W. Kadlec, and Isaac Grinstead, plaintiffs, by Harry R. Booth, their attorney, and complaining of the defendant, Illinois Bell Telephone Company, allege:

1. Plaintiffs Thomas Kadlec and James W. Kadlec are residents of the County of Cook, State of Illinois and are citizens of the United States. Isaac Grinstead, plaintiff, is a resident of the County of Kankakee, State of Illinois and a citizen of the United States.

2. The defendant, Illinois Bell Telephone Company, a corporation, organized under the laws of the State of Illinois (hereinafter referred to as "IBT"), is engaged in rendering telephone service in the said City of Chicago and County of Cook. It is part of the nationwide American Telephone and Telegraph system, of which it is a subsidiary. IBT's principal office is located in the City of Chicago.

3. This Court has jurisdiction over this Complaint under Title 42, U. S. C. 1983, 1985, 28 U. S. C. 1331(a) and 1343 and Amendments I and IV and Section I of Amendment XIV of the Constitution of the United States.

4. By this action Plaintiffs seek damages against IBT for the deprivation of their rights and privileges secured by the laws and Constitution of the United States arising out of (a) its unlawful entry under color of law upon the property of the Plaintiffs or one or more of them (b) the abridgement of the right of freedom of speech and means of communication under color of law in violation of Amendment I (c) the denial of due process in violation of Section 1 of Amendment XIV and (d) the violation of 28 U. S. C. Sec. 1983 and 1985 by acts more fully shown herein.

5. IBT at all times acts under color of laws or regula-

tions in rendering telephone service to Plaintiffs or other customers, in discontinuing such service or in entering upon the premises of its customers including the Plaintiffs or one or more of them.

6. IBT individually and as part of the American Telephone and Telegraph system provides one of the primary means for oral expression to the Plaintiffs and to more than 85% of the people of the United States for residential, commercial, scientific, educational, health and other purposes. IBT and AT&T facilities transmit information regularly in other forms including writing, music, pictures as well as speech. As public utilities and engaged in interstate transmission, IBT and AT&T are bound by Sec. 1 of Amendment XIV not to discontinue telephone service without according their customers their rights of due process of law.

7. Communication by telephone has become a normal, regular and an indispensable means of expression by practically all citizens of the United States either for residential, educational, personal, commercial and/or other related purposes.

8. The communication facilities provided by IBT and AT&T through their telephone service and equipment when used by the plaintiffs or other subscribers or users constitutes a means of speech within the protection afforded citizens of the United States under the Bill of Rights of the Constitution of the United States.

9. Isaac Grinstead, plaintiff herein, and his wife reside in a trailer on the outskirts of the City of Kankakee, Illinois. Such trailer is located in a non-otherwise populated area and adjoins the commercial property and business of the plaintiff Thomas Kadlec, but it is not located upon it.

10. Some time prior to January 1, 1966 IBT installed its telephone equipment and facilities in such trailer and

began furnishing telephone service to the said Grinstead, and his wife under telephone number WE 2-3964. Such service was used by them for usual residential purposes.

11. Grinstead who is over the age of 60 also acts as a nightwatchman for Plaintiff Thomas Kadlac for his extensive Kankakee property adjoining such trailer. On occasion such telephone service might be used in order to aid in protecting such property against fire, theft or related purposes.

12. In view of the isolated location of such trailer, IBT's telephone service was an indispensable means of communication by the said Grinsteads for their health and other residential purposes.

13. Plaintiff Thomas Kadlec acted as the said Isaac Grinstead's agent in providing such service. From the time such service was installed until it was shut off on March 17, 1967 by IBT and thereafter IBT sent all bills for such service to the said Thomas Kadlec who regularly paid IBT for such service. The total annual bill for such service during 1966 was approximately $100 and seldom if ever has the monthly bill exceeded $10 per month since such service was connected by IBT.

14. At no time prior to March 16, 1967 or subsequent thereto has IBT furnished plaintiffs or either of them any statement in writing alleging that such service was used by the said Grinsteads in violation of any rule or regulation of IBT, any law of the State of Illinois or that of the United States.

15. On March 16, 1967 without prior notice to the plaintiffs or either of them the defendant IBT arbitrarily, illegally and willfully shut off the telephone service rendered to Plaintiff Grinstead and his wife.

16. Plaintiff James Kadlec resides at 7254 Milwaukee Avenue, Niles, Illinois, in a 2-story residence. He and his

sister Rosemarie and their parents are the sole occupants of such building though they live in separate apartments. James Kadlec is a partner with his brother Thomas Kadlec in the operation of their business under the name of Skokie Automotive. Such business in which Thomas Kadlec has been engaged in for more than 10 years relates to the sale of automobile parts and related operations, including the rebuilding of certain parts, at wholesale and retail.

17. On or about August 1, 1964, IBT installed telephone equipment and facilities for the use of James and Rosemarie Kadlec in the above residence under the telephone number NIles 7-8145. IBT then began rendering such telephone service to them which was used by them for their personal business.

18. Such number was given by James Kadlec to various persons who communicate with him largely for personal reasons. Such number was also given to the United States Army, in accordance with its regulations requiring that plaintiff, a Captain in the Reserve Army, be available for emergency or other service. In addition, such telephone number was furnished to the Niles Police Department, who, from time to time, call it for emergency nighttime towing service performed by plaintiffs, Thomas Kadlec and James Kadlec, in accident or other emergency situations.

19. Plaintiff, Thomas Kadlec, acted as the agent of James and Rosemarie Kadlec from time to time in connection with such telephone furnished by IBT. Either he or James Kadlec paid for such telephone service and such payments were made in accordance with the rules and regulations of IBT.

20. On or about March 16, 1967, IBT, its agents and employees or either of them, entered the property of the Plaintiffs, Thomas Kadlec, and James W. Kadlec, or one

or more of them, in Niles and Kankakee County, Illinois, and engaged in a search of such premises and property.

21. Such search was conducted by IBT under color of law.

22. Such search was conducted by IBT without prior notice to the Plaintiffs or either of them.

23. Such search was conducted without a hearing, a search warrant or judicial proceeding.

24. Said search constituted an unreasonable search in violation of Amendment IV of the Constitution of the United States and constituted a deprivation of the rights of Plaintiffs, Thomas Kadlec and James Kadlec secured by the Constitution and laws of the United States.

25. On or about March 16 and 17, 1967, IBT, its officers, agents or employees, then and there, without prior notice or an opportunity to be heard, did shut off and destroy telephone service rendered by IBT under telephone numbers WE 2-3964 to the said Isaac Grinstead, plaintiff, and his wife.

26. On or about March 16 and 17, 1967, without prior notice or hearing to James Kadlec and Rosemarie Kadlec or any other plaintiff, IBT did then shut off and discontinue telephone service rendered by IBT to them under telephone number NIles 7-8145.

27. On or about March 16 and 17, 1967, without prior notice to plaintiff, Thomas Kadlec, or any other plaintiff herein, IBT did then shut off telephone service rendered by it under telephone number PEotone 258-3811 to Thomas Kadlec in a small house located on such plaintiff's kankakee property.

28. All such acts of discontinuing such telephone service were arbitrary and illegal and in violation of Amendments I and Section 1 of Amendment XIV of the Constitution of the United States.

29. All such acts of IBT in shutting off such service were under color of law or regulations of the State of Illinois.

29A. IBT and AT&T possess monopoly rights to serve 85% of the nation's telephone users including areas where Plaintiffs reside.

30. The acts of the defendant in shutting off such telephone service has, since March 16, 1967, deprived the plaintiffs herein, Isaac Grinstead, James Kadlec and Thomas Kadlec of their right of freedom of speech and means of communication guaranteed to them by Amendment I of the Constitution of the United States.

31. Any regulations, rules or laws of the State of Illinois or IBT pursuant to which IBT conducted a search of the premises of the plaintiffs Thomas Kadlec and James Kadlec, or either of them, or discontinued the telephone service of any of the plaintiffs herein are null and void in that they violate and are contrary to Amendments I, IV and XIV of the Constitution of the United States.

32. IBT in depriving plaintiffs Isaac Grinstead, Thomas Kadlec and James Kadlec of rights, privileges or immunities secured by the Constitution and laws of the United States acted in concert with numerous other persons, officers and agents of the State of Illinois in depriving such plaintiffs or one or more of them of their civil rights and of equal protection of the laws in violation of 42 U. S. C. Section 1985.

33. Plaintiffs and each of them have suffered large and substantial injury and loss including irreparable damage as a result of the aforesaid wrongful acts of IBT, its officers and agents.

34. The acts of IBT in depriving plaintiffs of rights under the laws of the United States and its Constitution are of a willful and wreckless character. IBT has for a

period of more than 25 years knowingly filed rules and regulations with one or more agencies of the State of Illinois and that of the United States for the purpose of obtaining immunity from its violations of the laws and Constitution of the United States.

35. Plaintiffs have no remedy for the wrongs committed by IBT and its officers and agents other than in this Court in that (a) No state or federal administrative agency is possessed with authority to award damages to the plaintiffs or either of them on account of the acts of IBT in violating the laws and Constitution of the United States as set forth in this Amended Complaint (b) only the Federal courts have been empowered by the Congress of the United States to award damages for such wrongful acts.

36. Plaintiffs are entitled to the recovery of compensatory and punitive damages on account of the wrongful acts of IBT in violating 42 U. S. C. 1983 and 1985 and Amendments I, IV and XIV. Plaintiffs are likewise entitled to punitive damages for each day during which IBT has failed to restore such telephone service to the plaintiffs which has been discontinued by it in violation of the rights of the plaintiffs under the laws and Constitution of the United States.

37. Plaintiff Thomas Kadlec is further entitled to additional punitive damages against IBT in that subsequent to March 17, 1967 under the threat of discontinuing and shutting off all of his business service in both Kankakee and Niles, Illinois, IBT again entered upon and searched the premises of the said plaintiff in violation of Amendment IV of the Constitution of the United States.

NOW THEREFORE Plaintiffs Thomas Kadlec, James Kadlec, and Isaac Grinstead, pray for a trial by jury and that upon such trial they be awarded judgment and damages as follows:

1. Plaintiff Thomas Kadlec is entitled to compensatory and punitive damages against Illinois Bell Telephone Company in the sum of $50,000 each on account of its violation of Amendment IV.

2. Plaintiff, Thomas Kadlec, is also entitled to damages of $50,000 and $200 per day since March 16, 1967 on account of Illinois Bell Telephone Company's violation of Amendment I and XIV of the Constitution of the United States and 42 USC 1983 and 1985.

3. Plaintiff, James W. Kadlec, is entitled to compensatory and punitive damages in the sum of $50,000 against Illinois Bell Telephone Company on account of its violation of Amendment IV of the Constitution of the United States.

4. Plaintiff, James W. Kadlec, is entitled to compensatory and punitive damages in the sum of $50,000 on account of Illinois Bell Telephone Company's violation of Amendments I and XIV, Section 1 and 42 USC 1983 and 1985. He is also entitled to compensatory and punitive damages of $200 per day since March 17, 1967, against Illinois Bell Telephone Company.

5. Plaintiff, Isaac Grinstead, is entitled to compensatory and punitive damages of $50,000 each from Illinois Bell Telephone Company on account of its violation of Amendment I and $200.00 per day for each day since March 16, 1967, until his telephone service is restored on account of its violation of Amendments I, XIV, Section 1 and 42 USC 1983.

6. Plaintiffs are also entitled to such further and additional relief as may be just and reasonable in the premises.

AMENDMENT TO AMENDED COMPLAINT

Now Comes the Plaintiffs, Thomas Kadlec, et al by their attorney Harry R. Booth, and by leave of Court amends paragraph 22 of their Amended Complaint as follows:

Paragraph 22 is amended by adding to it the words "or without their consent" so that such paragraph shall read as follows:

Such search was conducted by IBT without prior notice to the Plaintiffs or either of them or without their consent.